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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

COLES VALLEY CHURCH, a Non-Profit  
Corporation, and JAMES MATTHEW  
ROYSTON,

Plaintiffs,

v.

OREGON LAND USE BOARD OF  
APPEALS, An Oregon State Administrative  
Agency; and DOES 1 THROUGH 50,  
Inclusive,

Defendants.

Case No. 6:20-CV-00661-MK

ANSWER AND DEFENSES OF OREGON  
LAND USE BOARD OF APPEALS

Defendants Oregon Land Use Board of Appeals (herein referred to as “State Defendant”),  
by and through the undersigned, in response to Plaintiff’s complaint, admits, denies, and alleges  
as follows:

1.

State Defendant admits Paragraph 1.<sup>1</sup>

2.

State Defendant lacks sufficient information to admit or deny the allegations in Paragraph 2, and therefore denies the same.

3.

With respect to Paragraph 3, State Defendant admits that the Oregon Land Use Board of Appeals (“LUBA”) is an Oregon administrative agency whose existence and authority are governed by Oregon law, including statutes and the Oregon Administrative Rules.

4.

Insofar as Paragraph 4 states legal conclusion, State Defendant is not required to respond and therefore takes no position at this time.<sup>2</sup>

5.

State Defendant lacks sufficient information to admit or deny the allegations in Paragraph 5, and therefore denies the same.

6.

With respect to Paragraphs 6 and 7, State Defendant denies that this Court has jurisdiction over this matter.<sup>3</sup>

7.

State Defendant takes no position on the allegations in Paragraphs 8 and 9.

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<sup>1</sup> Although Plaintiffs have identified LUBA as the Defendant, it is the Defendant LUBA’s position that the proper defendant is the State of Oregon.

<sup>2</sup> Moreover, Defendant Douglas County has been dismissed from this case.

<sup>3</sup> See affirmative defenses.

8.

Paragraph 10 incorporates by reference Paragraphs 1 to 9 into the General Allegations portion of the Complaint. To the extent a response is required, please see answers to Paragraphs 1 to 9 above.

9.

With respect to Paragraph 11, State Defendant admits that Coles Valley Church (“CVC”) is a church located on 1.44 acres of land, at 1421 Iverson Road, in Umpqua, Oregon, located in Douglas County, Oregon. State Defendant is without sufficient information as to the remaining allegations in Paragraph 11, and therefore denies the same.

10.

With respect to Paragraph 12, State Defendant admits that CVC’s land is in an area zoned Exclusive Farm Use-Cropland (“FC-3”). The remainder of Paragraph 12 contains legal conclusions to which no response is required.

11.

Paragraphs 13 and 14 contain legal conclusions, to which no response is necessary. To the extent that a factual response is required, State Defendant lacks sufficient information to admit or deny the remaining allegations in Paragraphs 13 and 14.

12.

State Defendant lacks sufficient information to admit or deny the allegations in Paragraphs 15, 16, and 17, and therefore denies the same.

13.

With respect to Paragraph 18, State Defendant admits that CVC applied to Douglas County for a permit to convert a room in the church into a home. State Defendant further admits that Douglas County approved CVC’s permit application. State Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 18, and therefore denies the same.

14.

With respect to Paragraph 19, State Defendant admits that the owner of land neighboring the CVC property appealed the County's decision to LUBA and that LUBA had exclusive jurisdiction to review that land use decision. In all other respects State Defendant lacks sufficient information to admit or deny the factual allegations in Paragraph 19, and to the extent that Paragraph 19 contains legal conclusion, State Defendant is not obligated to respond.

15.

Paragraph 20 contains legal conclusions to which no response is required. To the extent that a response is required, LUBA's opinion speaks for itself. *See* Complaint, Exhibit C.

16.

With respect to Paragraph 21, LUBA's opinion speaks for itself. *See* Complaint, Exhibit C. State Defendant admits that Plaintiffs appealed LUBA's ruling in LUBA Case No. 2019-051 to the Oregon Court of Appeals, where the decision was affirmed. To the extent that the remainder of Paragraph 21 contains legal conclusions, no response is required.

17.

With respect to Paragraph 22, the Court of Appeals opinion speaks for itself. *See* Complaint, Exhibit D. State Defendant admits that Plaintiffs petitioned the Oregon Supreme Court for review and the Oregon Supreme Court denied review of Plaintiff's petition. To the extent that the remainder of Paragraph 22 contains legal conclusions, no response is required.

18.

State Defendant is without sufficient information to admit or deny the allegations in Paragraph 23, and therefore denies the same.

19.

Paragraphs 24 through 31 contain legal conclusions to which no response is required. To the extent that a factual response is required, State Defendant lacks sufficient information to admit or deny the allegations in those paragraphs.

20.

State Defendant requests that the Court deny the requests for relief outlined in Paragraphs 32 through 39. State Defendant further requests that the Court deny Plaintiff's prayer for relief (1) through (3).

21.

Except as expressly admitted, State Defendant denies each and every one of Plaintiffs' allegations.

### **FIRST DEFENSE**

#### **LUBA is not a proper defendant**

22.

State Defendant asserts that LUBA, as a quasi-judicial body without enforcement authority, is not a proper defendant to this action. *See generally* ORS 197.805, ORS 197.810, and ORS 197.835. Rather, the proper defendant would be the State of Oregon. The State of Oregon should be substituted as the defendant in this matter because the remedy sought by Plaintiffs goes beyond the authority possessed by LUBA. ORS 197.835 (LUBA has authority to review land use decisions and then issue a final order reversing, affirming, or remanding the land use decision).

### **SECOND DEFENSE**

#### **Failure to State a Claim Pursuant to FRCP 12(b)(6)**

23.

Plaintiffs' claims for relief fail to state a claim upon which relief may be granted.

### **THIRD DEFENSE**

#### **Lack of Jurisdiction Over the Subject Matter**

24.

Plaintiff's claims are barred for lack of subject matter jurisdiction. This includes, but is not limited to, asserting that the *Rooker-Feldman Doctrine* and the *England Reservation*

*Doctrine* prohibit this action. Although the Court has denied State Defendant's motions to dismiss on these defenses, the defenses are included in the answer specifically for purposes of preserving the record for appeal.

#### **FOURTH DEFENSE**

##### **Res Judicata, Collateral Estoppel, and Claim Preclusion**

25.

Plaintiffs' claims are barred by the doctrines of Res Judicata, Collateral Estoppel, and Claim Preclusion. Although the Court has denied State Defendant's motions to dismiss on these defenses, the defenses are included in the answer specifically for purposes of preserving the record for appeal.

#### **FIFTH DEFENSE**

##### **Failure to Join a Necessary Party**

26.

This action should be dismissed pursuant to Fed. R. Civ. Pro. 12(b)(7), because Plaintiffs have failed to join all necessary parties. Necessary parties include, but are not limited to, the neighboring landowners and Douglas County. These necessary parties are identified in State Defendant's Second Motion to Dismiss. Although the Court has denied State Defendant's Second Motion to Dismiss on this defense, the defense is included in the answer specifically for the purpose of preserving the record for appeal.

#### **SIXTH DEFENSE**

##### **Eleventh Amendment Immunity**

27.

State Defendant alleges that they are immune from suit in federal court and protected under Eleventh Amendment immunity. This defense is asserted to preclude a money damages claim.

**RESERVATION OF ADDITIONAL DEFENSES**

28.

State Defendant reserves the right to assert additional defenses as may become known to them through investigation and discovery.

WHEREFORE, having fully responded to the Complaint, State Defendant prays for a judgment in favor of State Defendant against Plaintiffs, dismissing Plaintiffs' Complaint in its entirety and awarding State Defendant its costs and disbursements incurred herein, and for such other and further relief as the Court may deem appropriate.va

DATED June 4, 2021.

Respectfully submitted,

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Attorney General

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Of Attorneys for Defendant State of Oregon, by  
and through the Oregon Land Use Board of  
Appeals

**CERTIFICATE OF SERVICE**

I certify that on June 4, 2021, I served the foregoing ANSWER AND DEFENSES OF OREGON LAND USE BOARD OF APPEALS upon the parties hereto by the method indicated below, and addressed to the following:

Ray D. Hacke  
Pacific Justice Institute  
PO Box 5229  
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*Attorney for Plaintiffs*

☐ HAND DELIVERY  
☒ MAIL DELIVERY  
☐ OVERNIGHT MAIL  
☐ TELECOPY (FAX)  
☐ E-MAIL  
☒ E-SERVE

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